

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D. C. 20554

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APR 11 1994

In the Matter of

Computer III Remand Proceedings;
Bell Operating Company Safeguards;
and Tier 1 Local Exchange Company
Safeguards

Application of Open Network
Architecture and Nondiscrimination
Safeguards to GTE Corporation

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY
CC Docket No. 90-629

CC Docket No. 92-256

NYNEX'S COMMENTS ON RULES
GOVERNING TELEPHONE COMPANIES' USE OF CPNI

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and
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Dated: April 11, 1994

No. of Copies rec'd 215
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SUMMARY

For the reasons stated herein, no changes to the CPNI rules are warranted. The CPNI rules were developed and adopted specifically to stimulate and protect an expanding, innovative and competitive marketplace. As a vehicle to promote competition, the CPNI rules have proven to be effective and do strike an appropriate balance of competitive equity, efficiency and customer privacy concerns.

If the Commission's primary objective is to protect privacy, the CPNI rules are not an appropriate vehicle. Regulation intended to protect privacy must apply to all service providers, irrespective of their market shares, and it must be consistent with customers' reasonable expectations of privacy. The CPNI rules, in contrast to these principles, are limited in application to the BOCs, AT&T and GTE. Moreover, the CPNI rules actually exceed customers' reasonable expectations of privacy.

NYNEX therefore respectfully requests that the Commission refrain from changing the existing CPNI rules and, if the Commission determines that privacy protection is required, that the Commission institute a separate proceeding to develop regulations designed specifically for that purpose.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D. C. 20554

In the Matter of)	
)	CC Docket No. 90-623
Computer III Remand Proceedings:)	
Bell Operating Company Safeguards;)	
and Tier 1 Local Exchange Company)	
Safeguards)	
		CC Docket No. 92-256
Application of Open Network)	
Architecture and Nondiscrimination)	
Safeguards to GTE Corporation)	

NYNEX'S COMMENTS ON RULES
GOVERNING TELEPHONE COMPANIES' USE OF CPNI

The NYNEX telephone companies, New England Telephone and Telegraph Company and New York Telephone Company ("NYNEX"), submit the following comments in response to a Public Notice ("Public Notice") released by the Commission on March 10, 1994, in the above-captioned proceeding.

I. INTRODUCTION

The Commission seeks comment on customer's expectations of privacy and whether any changes to existing Customer Proprietary Network Information ("CPNI") rules are required to strike the best balance of competitive equity, efficiency and customers' privacy interests. Commenters are asked to address (i) residential and small business customers' CPNI-related privacy expectations; (ii) whether CPNI rules should apply to local exchange companies ("LECs"), in addition to the Bell Operating Companies ("BOCs") and GTE; and (iii) whether any

changes to the CPNI rules should also apply to the provision of customer premises equipment ("CPE").

As a vehicle to promote competition, the CPNI rules have proven to be effective and do strike an appropriate balance of competitive equity, efficiency and customer privacy concerns. However, because they were crafted primarily to address competitive concerns, the CPNI rules are not an appropriate vehicle if the Commission's primary objective is to protect privacy. Regulation intended to protect privacy must apply to all service providers, irrespective of their market shares, and it must be consistent with customers' reasonable expectations of privacy. The CPNI rules, in contrast to these principles, are limited in application to the BOCs, AT&T and GTE. Moreover, because they are intended primarily to promote competition, the CPNI rules actually exceed customers' reasonable expectations of privacy.

In short, the existing CPNI rules serve their intended purpose to promote competition. Parties to this proceeding should not be permitted to use privacy arguments to achieve a competitive advantage through unnecessary changes to the CPNI rules that will adversely impact the competitive environment. If the Commission's objective is to protect privacy, it should commence a separate proceeding to consider the promulgation of rules designed specifically for that purpose.

II. THE CPNI RULES SERVE THEIR INTENDED PURPOSE AND SHOULD NOT BE CHANGED.

In the Public Notice, the Commission cited a "changing environment" brought about by telephone company alliances,

acquisitions and mergers with non-telephone company partners.¹ The Commission asks whether this "changing environment" raises additional privacy concerns that should be addressed by the CPNI rules.²

No changes to the CPNI rules are warranted. The CPNI rules were developed and adopted specifically to stimulate and protect an expanding, innovative and competitive marketplace. The rules accomplish that purpose. Moreover, privacy concerns are adequately addressed since the restrictions on use of customer information already imposed by the CPNI rules actually exceed customers' reasonable privacy expectations as they apply to the BOCs, AT&T and GTE.³

A. The CPNI Rules Are Part Of A Regulatory Framework Created To Accommodate And Encourage An Expanding, Innovative And Competitive Marketplace.

The Commission has stated that its purpose in instituting the Third Computer Inquiry was to conduct "a comprehensive reexamination of the rules and policies for regulating telecommunications and computer services" that had

1 Public Notice, pp. 2-3.

2 Public Notice, p. 3.

3 Customer privacy was specifically considered by the Commission in developing the CPNI rules. Although the primary objective of the CPNI rules -- to promote competition -- could have been achieved by making customers' CPNI universally available, this alternative was rejected by the Commission because of customers' privacy interests. See, e.g., Furnishing of Customer Premises Equipment and Enhanced Services by AT&T, CC Docket 85-26, Order, released September 30, 1985, 102 F.C.C. 2d 655, ¶ 64, modif. in part on recon., Memorandum Opinion and Order on Reconsideration, released August 7, 1986.

been developed in the Second Computer Inquiry.⁴ This reexamination was motivated by "the continuing significant changes in the communications and computer services marketplace."⁵

In place of the Second Computer Inquiry structural separation requirements, the Commission devised a new regulatory framework, carefully crafted not only to accommodate, but to encourage innovation in the evolving telecommunications industry.⁶ Rules adopted by the Commission in the Third Computer Inquiry were formulated in a post-divestiture environment of burgeoning competition in which separate industries were already beginning to converge and strategic alliances were being formed.⁷ The regulatory framework of the

⁴ Amendment of Sections 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry); and Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Thereof; Communications Protocols under Section 64.702 of the Commission's Rules and Regulations, CC Docket No. 85-229 ("Third Computer Inquiry"), Report and Order, released June 16, 1986, 104 F.C.C. 2d 958, ¶ 1.

⁵ Third Computer Inquiry, Report and Order, released June 16, 1986, 104 F.C.C. 2d 958, ¶ 1.

⁶ In the Third Computer Inquiry, the Commission concluded that the structural separation requirements -- which, among other things, precluded the sharing of customer data with enhanced service affiliates -- imposed significant costs on the public by decreasing efficiency and impeding innovation. Third Computer Inquiry, Report and Order, released June 16, 1986, 104 F.C.C. 2d 958, ¶ 3.

⁷ In its Notice of Proposed Rulemaking for the Third Computer Inquiry, the Commission cited such changes in the industry as the IBM Corporation's increasing presence in various sectors of the telecommunications industry through its ownership interests in MCI Corporation (an interexchange carrier) and Rolm Corporation (a CPE and

Third Computer Inquiry -- which includes the CPNI rules -- was crafted to accommodate just such a changing environment.

Today's environment, though much more competitive, is merely an extension of the evolutionary and revolutionary forces that were initiated with divestiture and fueled by the Third Computer Inquiry, CPE structural relief, cable deregulation, and information services relief granted by the Court. The Commission's Third Computer Inquiry regulatory framework and CPNI rules have proven to be effective at stimulating the development of a robust enhanced services marketplace. Numerous services using innovative technologies have been and continue to be introduced by BOCs and other service providers. At this point, there is no evidence that the rules are not appropriate and effective in achieving their goal.

B. The Existing CPNI Rules Should Not Be Changed.

NYNEX's experience indicates that customers expect that a company will utilize customer information that the company has obtained in providing one product to sell that customer other products sold by the company or its affiliates. Furthermore, in NYNEX's experience, the vast majority of customers do not object to having their CPNI made available to NYNEX-affiliated

⁷ (Footnote Continued From Previous Page)

telecommunications equipment manufacturer). Third Computer Inquiry, Notice of Proposed Rulemaking, released August 16, 1985, ¶ 22.

companies that may offer other telecommunications services and equipment.⁸

NYNEX's experience is consistent with the Commission's findings in connection with implementation of the Telephone Consumer Protection Act of 1991. The Commission stated:

We conclude, based upon the comments received and the legislative history, that a solicitation to someone with whom a prior business relationship exists does not adversely affect subscriber privacy interests. Moreover, such a solicitation can be deemed to be invited or permitted by a subscriber in light of the business relationship. . . . [W]e find that a consumer's established business relationship with one company may also extend to the company's affiliates and subsidiaries.⁹

The fact is that customers want the convenience and benefit that result from such internal use of customer information. Customers expect and want to know about new

⁸ Pursuant to Commission rules, multiline business customers with under twenty-one lines are given annual notice of CPNI requirements, including the right to restrict the release of CPNI to CPE and enhanced services marketing and sales personnel within the company. The vast majority of these customers do not restrict their CPNI in such a manner. For example, only about 20 percent of NYNEX's multiline business customers receiving annual notifications have restricted the release of their CPNI to CPE and enhanced service marketing and sales personnel. In addition, many customers who initially restrict their CPNI information subsequently unrestrict their CPNI. That is, they allow the release of their CPNI to enhanced services and CPE marketing and sales personnel, once they realize through their normal contacts with their NYNEX customer service representative that they have effectively limited the products and services that could be marketed to them by NYNEX. Also, less than 10% of NYNEX's largest customers who have dedicated account managers -- who have had the opportunity to explain to those customers the significance of restricting use of their customer information -- have elected to restrict their accounts.

⁹ Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CC Docket No. 92-90, Report and Order, released October 16, 1992 ("TCPA Order"), ¶ 34.

products and services that have been identified for them by their service provider. This is particularly the case with products or services that are not generally advertised because of limited demand or application. In addition, internal use of information by a company and its affiliates permits companies to offer product or service combinations that make sense in light of a customer's existing service. For example, an existing voice mail customer's service could become even more useful to the customer by the addition of a fax mail service or an information news service that places the day's stock quotes in the customer's voice mail box.¹⁰

NYNEX has found that customers view their local telephone company as one company that offers a wide range of communications services. Customers do not distinguish between

¹⁰ In some circumstances, external disclosure by a company of customers' information (i.e., disclosure to an unaffiliated company) is also consistent with customer expectations of privacy. For example, it is readily foreseeable that, in the conduct of their business, companies may use the services of consultants. In addition, customers know that they must typically pay for services they receive; disclosure of information to an unaffiliated company for the purpose of billing and collection could therefore readily be expected.

There are also instances of external disclosure to unaffiliated companies that may be perceived by the customer as closely akin to internal disclosure. These instances include such undertakings as joint ventures, which require the sharing of customer lists for purposes of the joint venture, and provide the same convenience and benefit to customers as the internal sharing of information by affiliated companies. From the perspective of customer expectation, the sharing of information in joint ventures may be distinguished from, for example, the outright sale or other disclosure by a company of customers' information to an unaffiliated company to be used for the unaffiliated company's own purposes.

"basic" and "enhanced" services; it is a distinction made for regulatory purposes. Customers expect to be treated by their telephone company as they would be treated by any company that provides a service or sells a product to them. That is, they expect that their telephone company will advise them of all the potential communications services and products that are available to them as part of their normal business/customer relationship. Once customers understand the limitations resulting from restricting their CPNI, customers overwhelmingly decide not to restrict their CPNI.¹¹

Thus, although the CPNI rules were intended primarily to promote competition, they do restrict the disclosure of information outside of NYNEX and, as a result, afford privacy protection. As shown above, the protection afforded actually exceeds customers' reasonable privacy expectations, as they apply to the BOCs, AT&T, and GTE. It is therefore unnecessary, from a privacy perspective, to change the existing CPNI rules to create a different balance of competitive equity, efficiency and customer privacy concerns.

¹¹ For those customers that are subject to prior authorization (business customers with over twenty aggregate lines), the vast majority of these customers who do not have dedicated account managers have not provided authorization. This contrasts with the largest of NYNEX's customers, as noted in footnote 8, who have dedicated account managers, where the restriction rate is less than 10 percent.

The potential for customer confusion, resulting in restrictions on the use of CPNI not intended by the customer, is especially great in the case of residence and small business customers, who typically do not have dedicated account managers routinely available to provide information concerning the CPNI rules and the effect of restricting customer information.

C. Effective Privacy Protection Regulation Must Be Based Upon A Full Regulatory Analysis.

In crafting rules, a distinction must be made between regulation that is intended to protect privacy and regulation that is intended to promote competition. Regulation to promote competition may not be fully appropriate to protect privacy.

This is exemplified by the CPNI rules. The rules apply only to AT&T, the BOCs and GTE, and do not restrict the use of customers' information by other telecommunications services providers that may have the same or similar type of information concerning their customers. Moreover, as shown above, the CPNI rules exceed customers' reasonable expectations of privacy.

If the Commission determines that additional privacy protection is necessary, it should frame new rules that embody certain principles. The first principle is that regulation deemed necessary to protect the privacy of customers' information must apply equally to all providers of a particular service. Thus, for example, the same privacy protections should apply to the provision of telephone service whether service is provided by a dominant or non-dominant carrier.

The second principle is that privacy protection regulation should meet customers' reasonable privacy expectations. Regulation that exceeds customer expectations creates confusion and unnecessary hurdles to the sharing of customers' information, resulting in inefficiency and hindering innovation. Ultimately, it is the customer who loses out by not being offered new services. Effective privacy protection regulation must therefore be based upon a full regulatory

analysis to ensure that the rules adopted accommodate customers' privacy concerns and businesses' ability to compete effectively.

III. CPNI RULES SHOULD NOT BE APPLIED TO CPE.

The Commission's CPNI rules are serving the purpose for which they were intended -- to create an environment that stimulates and protects the evolution of the telecommunications industry and, in particular, enhanced services. There is therefore no need to change those rules; nor would it be appropriate to expand them to apply to CPE.¹²

From a competitive equity and efficiency perspective, the mandatory application of CPNI rules is unnecessary in the CPE context. The CPE industry is a fully competitive and mature industry in which the BOCs have only a small part of the overall market. To add additional regulation to the BOCs, or the industry in general, would serve no competitive purpose and result in increased costs and a decrease in efficiency and innovation.

From a customer privacy perspective, based on the discussion of customers' privacy expectations set forth above, there is likewise no reason to apply any additional CPNI rules to CPE. Moreover, even if the Commission were to determine that customer privacy protection were required in the CPE context,

¹² Any application of the CPNI rules to CPE should be left to the BOCs, as the Commission did in its Third Computer Inquiry proceedings. Computer III Remand Proceedings: Bell Operating Company Safeguards; and Tier 1 Local Exchange Company Safeguards, CC Docket No. 90-623, Report and Order, released December 20, 1991, 6 FCC Rcd. 7572, ¶ 89, n.167.

the CPNI rules are not an appropriate privacy-protection vehicle. If the Commission's objective is to protect privacy as noted above, it should commence a separate proceeding to consider the promulgation of rules designed specifically for that purpose and consistent with the principles of privacy protection regulation discussed above.

IV. CONCLUSION

For the foregoing reasons, NYNEX respectfully requests that (i) the Commission refrain from changing the existing CPNI rules, and (ii) if the Commission determines that privacy protection is required, the Commission institute a separate proceeding to develop regulations designed specifically for that purpose.

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I certify that copies of the foregoing NYNEX'S
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were served on each of the persons listed on the attached
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